COUTUMIER DE LA TRIBU BAHNAR DES SEDANG ET DES JARAI
DE LA PROVINCE DE KONTUM
by Paul Guilleminet

(VOLUME II)

Translation of Articles 71 to 76 inclusive.

Article 71
The territory.

Principles

I. The lands, the waters, and the forest constitute the territory which is totally shared between groups of villages: the taring;

II. The inhabitants of each taring have the exclusive right to use that territory, but cannot forbid, at any time or in any way, the free movement of all people by any ways and means. The most they can do, in certain precise cases, is to restrict and to direct it (Article 26, I, 8).

III. Each taring, each village may manage its own property, transfer its use to others, give it away under definite conditions, and refer to the law if necessary.

Comments

The taring mentioned in note 1 of the preamble, page 18, share between themselves all the land of the area. In the Kontum province, there is no unappropriated land nor even any unappropriated portion of river. The rights of usage of them are fixed; whoever does not belong to a taring may purchase some land belonging to the inhabitants of the taring but are not authorized to live on it. Since the arrival of the French Administration, the situation has become complicated because of the fact that the adminis-
tribution has some rights defined in Article 35 and 72.

The taxing authorities have not the right to stop traffic on the territory, they must direct or control it in case there exists an epidemic or epizootic disease and may temporarily divert it in case of interdiction, on condition that the interdiction will not apply to agents and officials on duty.

An agent or an official who infringes an interdiction would fall within the purview of article 20, III, and would not be protected by paragraphs I and II of said article (unless said person had some imperative reason) without his being on duty.

A recent regulations requires the intervention of the Administration in all sales of land to the Vietnamese. The sale is valid only if the certificate of sale (which must be established) is certified by the Residency; however the Residency may oppose any sales of land. These regulations are designed to prevent the Mountaineers, who are oftentimes improvident, from being deprived of their cultivated lands by selling them to the Vietnamese for an immediate profit. The latter may also clear lands in accordance with conditions stated in Article 72, but generally they do not want to do so and prefer buying fields already cleared by others.

During these last few years some villages have intervened either for the purpose of building dispensaries, schools or churches, or for setting up rice reserve stocks (commentaries on article 95).
In the first case, it is not yet expressly known who is the proprietor of the buildings, in the second case the ancients are considered as managers of these stocks which remain the property of each of those who have contributed to their establishment.

Such is the case since 1935 in Polei Bong Mohr village in which three ancients fill the position of managers in the name of the inhabitants who have established the stock (and are individually known), but not in the name of the village proprietors as a whole (commentaries on article 95). In fact, when it is said that such portion of the territory "belongs" to such a village, an usual but inaccurate term has been used; we must say that such portion of the territory is indiscriminately placed at the disposition of any inhabitant of such village and not of other villages.

The group exists constituting a village, but the village is not properly speaking a corporate body possessing property and the right to dispose of it freely. The above fact reveals itself when the village (or better, the group) makes offerings, for instance when a parish house is built. In such case, each one subscribes to a common fund, because the village has no animals to kill nor crops to sell.

Article 72

Some cases where the Administration may occupy land or private property.

Principle.

I. The Administration is the eminent proprietor of all territories and estates which are not the object of individual property. (Article 35, 77, III; case 345).
II. Consequently, the administration can mark on objects; when necessary, it can appropriate some plots of land in the territory, occupy them or authorize others to occupy them, temporarily or not, create servitudos there, even if compensations should be paid to the rightful owners in the following cases:

1/ these plots are private properties, are actually used or developed by an individual or a group;

2/ there exist some harvest or planted trees thereon.

III. The positions of the Administration before the court is defined in Article 13.

Comments.

From the Mountaineers' standpoint the juridical position of the French Administration is exposed in Article 13 and the land situation is as follows:

The Administration has the right to use:

For a common interest or for serving a general interest.

1/ vacant estates and unoccupied lands, with no compensation to be paid.

2/ occupied lands and land belonging to individual properties, with payment of some compensation.

The Administration is concerned in any of the following cases:

1/ A road is to be built and necessary lands must be taken;

2/ A house is to be built (for instance a watching post for the Indochinese Guard) and the traffic in a given area must be restricted or forbidden;
3/ When it cuts forest-trees for its own need.
4/ It decides forest reserves;
5/ It fixes the limits of the territory of a concessionaire or of Vietnamese settlers;
6/ It issues felling-licences;
7/ It authorizes Vietnamese hunters and fishers to settle themselves in some places.

It was in the year 1910 that Resident Guénot made the Banmar accept the territorial notion under the following circumstances:

He has used a fallow ground belonging to the toning of Pôlei Tônia as a sheep-fold. A man by the name of Den claimed it back. Before the village ancients Guénot made Den recognize that neither the latter nor his ancestors had ever cultivated that land, that the Administration should be considered as having everywhere the rights recognized as belonging to each inhabitant of a toning and consequently it can, without indemnifying anybody:

1/ First, occupy a plot of land, then become its proprietor through permanent occupation.

2/ Use its rights to felling trees and other rights in the same way as others.

Besides, the Administration, in the general interest, would be able to dispose of lands already occupied or possessed by others, by paying compensation to people it might damage.

But nothing may justify (naturally from the Mountaineers' point of view) the installation of French or Vietnamese colonists, the issuance of felling-licences to private people nor the installations of hunters and fishers in
the conditions where that has been done.

If the Mountaineers have been in fact obliged to give way, and if they have accepted this situation because they could not do otherwise, it is interesting to examine the objection they present:

a) They realize the fact that the Administration needs trees and takes them, but the villages near Kontum through which run broad roads suffer from the fact that many licences have been issued to Vietnamese for felling trees in their territory, to such a point that they run the risk "of soon no longer having any wood to make their coffins."

b) They realize the fact that the Administration makes forest reserves, but while small numerous and scattered reserves do not incommode them, a vast reserve may prevent certain villages from earning their living, because there exist resources they can obtain only in their own territory which is however completely covered or almost entirely covered by the reserve.

c) They permit the installation of some concessions, while making the same objection to them as above, and they wonder why the holders of these concessions who do not enclose them (contrary to Article 75), forbid their cattle to go therein during the months of migration (comments on Article 75);

d) They accept the foreign hunter who clears away for them wild beasts, who kills red deer and wild boars which destroy his crops, and who, oftentimes affords them meat from those beasts; but they believe that fishers (case 403), may deprive them of one of their principal
resources at a moment when they sense the need to preserve them
(case 402).

These are not foolish arguments and are worth being considered by either
the Administration or by the tribunals which happen to study cases in the
Mountaineers' region. Murders have been committed, fires have been started
in plantations, vengeances have been executed by some Mountain people; they
had tried in vain to make people understand what they believed to be their
fair rights, while the interested parties turned deaf ears or proved them­
selves to be in-experienced people. They had not even been able to arrive at
a compromise (which they would accept, as indicated in case No. 403) with
those who appeared to them as having violated their customs with the agree­
ment of the Administrative authority.

The installation of the French authority in Kontum is too recent for
the inhabitants to have understood the significance of the regulations, the
application of which upsets their notions of right.

However, the regulations may be modified, at least temporarily, to suit
the present situation, because the Mountaineers, more capable of comprehe­
sion than we imagine, realize the reasons for which such or such a measure
has been taken by us. For instance, in order to satisfy them about the
forest problem, it would be sufficient that the felling of trees be done on
the territories of many different villages, and that many small forest re­
serves be made in lieu of a single vast reserve.

Comparisons.

Captain Huard gives this curious and interesting detail relating to the
Mnong: "During the construction of the track North of the central Plateau
which would cross the communal field, the hostility of one village ceased after an offering to the spirit of the paddy had been celebrated at the expense of the Administration."

**Article 73**

**About clearing lands.**

**Principle.**

I. Anyone may clear land on the territory of his own toring. The clearing must be made on vacant land which is not already cleared, nor can it encroach upon a clearing, especially a tapering encroachment; the field must be used according to the local customs. No charge is to be paid to the village or the toring when clearing land. What follows the clearing operations is given in comments below (See also the comments on Article 35).

II. The clearing area must be marked by signals of occupation, even if it is enclosed; it is possible to set traps there only in accordance with conditions provided in Article 75.

III. An unmarked and uncared for land, abandoned after one or several cultivations and where bushes have grown again, is a "tsar" which anyone may occupy.

**Comments.**

Any member of a toring may clear lands of his toring, nobody else may do it (commentaries on Article 70), a track is chosen, then occupying signals are laid; from that moment the field is occupied, even before any work is
started thereon. The trees are felled, lopped and left there until the wood dries up.

Fire can only be started on the felled trees according to the method of the village ancients (in March), and precautions stated in commentaries on Article 35 must be taken. The old custom wants to avoid firing the felled trees too soon, before the end of the rainy season. In such case, not only the woods of the impatient one would not burn completely but it is also possible that the fire would extend on his neighbor's woods and burn them incompletely thus making it impossible to burn them well later.

In fact, such a case never appeared before the tribunal, but the ancients, questioned on the matter, have agreed that if an individual, starting the fire to his trees too soon, damages the neighbouring areas, he could be sued in accordance with Article 36.

As soon as sowing is finished (in April, May), enclosures, stakes, traps may be placed and then the cattle must be specially taken care of, (to prevent them from damaging the seed). (Article 79, III, 1)

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Whosoever has occupied a field has a pre-emption right on that field the next year, then the following year (the field is then a mir pub klong) and the 3rd year also (the field becomes a mir ful). Only at the end of five years (except in the case of improvement works spoken of in Article 74), does this occupied field become a property.

It may happen that a field is temporarily abandoned during some short period of time (such case is nevertheless rare) then is occupied again, the
rights of the occupying person are not considered as prescribed. It will not
be so however, if bushes have grown again, if the field has become follow
again, and if in order to cultivate it the whole series of clearing operations
is again needed. The first occupier is then considered as having abandoned
his rights to that field.

In paragraph I of Article 73, we find enumerated the conditions regulat­
ing contiguous fields. A field must not be "offensive" from the ritual point
of view. But no arrangement has been made to separate two contiguous fields
by a strip of land and therefore, this is the cause of numerous law-suits,
either because of encroachment of land, or because there exist only one
barrier between neighbouring fields, and it is difficult to know who is the
landowner who has neglected taking care of it.

Comparisons.

For the Rhadé, lands are the properties of families (customs 229 to 236),
they are bound. Families lease them.

The situation therefore varies greatly in the Mountaineers' country.

1/ (Comparisons of Article 72): villages (or more truly groups)
cultivate land;

2/ Families (or groups) farm land and lease plots of it to others.

Such is the case in Darlac and in some regions of high Donnai
(comparisons of Article 71).

3/ Individuals cultivate (such is the case in Kontum) without paying
rent to anyone.

Elsewhere, the cultivated lands are the following:
1/ They may be simply occupied by the one who cultivates them;
2/ They may be owned by long usage, by purchase having it allotted.

I have not enough details about what happens outside of Kontum to be able to speak more on this matter.

Article 74

About the fields occupied and the fields owned.

Principles.

I.- The töring and the villages do not develop the lands, do not sell them nor rent them.

II.- He who holds the same fields permanently for 5 years, and notably keeps up the enclosure of that field, can claim the right of ownership. This delay is reduced to 2 years when the operations for the parceling, embanking, canals, drains have been undertaken on the field.

As soon as a person having the right to ownership (article 73) holds the field, nobody can forbid his living in that field; the loan or the rent of the field does not interrupt nor put off the delay necessary to having access to ownership—hứng jìng tơmain de."

III.- Tenants or borrowers never can become proprietors of a land borrowed or rented, no matter how long the duration of their occupation. It is up to the tenant or the borrower to watch himself and to avoid pretending to own the field (affairs 347, 350, and 356).

IV.- Everybody who buys or inherits an owned field in application of paragraph 2 becomes proprietor of that field.
The first paragraph of article 74 takes all its value when we compare the situation of Kontum to the one of the neighbouring provinces (references to article 73) concerning the ownership of the lands.

For many reasons, the têring of Kontum and their constitutive elements which are the villages, did not develop, did not sell nor rent the lands which constitute their territory to the moi at the beginning of the 19th century.

The Société des Mission étrangères around 1870 (or perhaps before) bought the lands (1)

In 1890 the Administration kept its rights stated in article 72 and, for political reasons, controls even at the present time the sale of lands, private properties to the Vietnamese, as it will be mentioned below (see also Commentaries of article 71)

The Administration finds to settle the inhabitants to the soil and to reduce their movements. The Moi is not refractory to this evolution, far from it, some sub-tribes have settled down themselves when, by chance, they possessed good lands that the floods periodically fertilized (Dahmar Bônga for instance)

The problem consists then in improving the poor lands of some têring

(1) The payment of these lands was made to the chiefs (?) to the old (?) who;
1) sold lands that did not belong to them
2) cashed money that did not fall to them
and in showing the Moi ways to avoid ruining the lands.

The provincial Administration encourages this policy. Also it favours both the construction of tile roofed-houses and the accession to the private ownership of the lands. It also tends to have the titled established by the Mois, as it will be mentioned below for the following reason:

Formerly there were Vietnamese who rented the private lands from the Moi, paid the taxes and came to declare themselves proprietors by presenting to the Residence their acquittances.

These facts dated from an unsettled period (1915-1920) and can no more happen. The present situation is the one mentioning in the commentaries of article 71 and supra; the Administration stands out against the sale of lands so that the Moi does not risk to be left without resources, but (Commentaries of article 72) it favours, on the other hand, the installation of the Vietnamese in some limited and non-cleared regions, with the agreement of the Moi and Vietnamese authorities. (Commentaries of article 71). The results acquired in Kontum justify the usage of this method, it is in honor of Resident Jerusalémy and H.E. Vo-Chuan who paid much attention in precomizing it, then putting it in application (1928-1936)

The accession of the Moi to the ownership by a 5 year occupation (which could correspond to the duration of a rotation of cultivations in Kontum), is probably a relatively old custom Resident GUENOT noticed its existence upon his arrival. The chiefs followed him as soon as he asked that people may accede to the ownership of a field in 2 years only, provided they work on it (irrigation canals or drainage).
Doubtless the chiefs expected to be the first to take advantage of the situation, nevertheless that idea had slightly touched their mind.

Besides, it is probable that formerly the Moi did not conceive that, by being the proprietor of a land, he could use it freely. Instead of ownership, it would be better to say inalienable occupation (boleng boàng) of land of which he could be dispossessed and that he could pass on to his descendants.

It is to be noted how the veto right that the administration exerts on the sale of lands is easily accepted. I have always noticed that the Bahmar, all ready to give way to the regulations (luft) conceived in the spirit of the custom Khơy (restriction to the sale of land, burning the forest for instance), was recalcitrant when he thought that the principles of the customs were violated (case of the tax and prestations, authorizations for cutting trees etc).

It is around 1935 that it was possible to orientate the land-owners towards the establishment of titles and plans of their real estate drawn by the Provincial Service of Land Registration. The possession of these titles corresponded to the annual payment of very small tax (0.20% to 0.30%). (By working their lands) the Bahmar were eligible to have these titles delivered to them. Nevertheless they were not forced to do it. The buyers of Vietnamese land, on the other hand, were required to establish compulsorily a title and a plan of the land they just bought.

After having loudly and publicity applauded this regulation, the chiefs did nothing then to incite their people to conform to this regulation. They succeeded in persuading a French functionary unaware of the real situation of the country, that this regulation presented no
interest. Their attitude is easily understood. The prosperous families, the Guardians of well-to-do minors do not restrain themselves from nibbling progressively the lands of their neighbours or their words; the division, between various heirs, of lands inherited from their parents is no more, 20 years after, than what it was at the death of these latter; the parents of children who are influential have laid hands on a part of the properties of the others.

Consequently, the classification of the Moi properties is a very long effort and should not be prematurely denigrated, but we should come never to judge affairs like affair 12, which are difficult to be instructed (Commentaries of article 82).

It is not usual that a Moi rents his land to a Moi, in general he borrows it as long as he does not need it. However, little by little, the line of interest becomes greater and some lands are worked on by metayers who have right to a part of the crop, whereas the other lands are rented for a yearly charge (in paddy, in money or in merchandises).

The lease by tacit agreement is unknown (comparisons of article 82).

Comparisons

I said in the Comparisons of articles 71 and the following, how the situation of the territories and the real estates was different with the Bahnar, Jarai, sedang in one hand (provinces of Kontum and Pleiku) and the other tribes.

However, I would remark that, following M. Gerber, the Stieng pass their lands down to their descendants. This shows that in this tribe, at least one can be landowner.
I would point out, on the other hand, that Canivey, after having said that uncultivated land in Haut-Donnai is totally portioned out among the descendants of the first families, specifies that these families have plots of forest leased for a yearly charge (one or two pigs, some chickens, some baskets of paddy or of corn) to the KIL (tribes living on high summits of the province of Haut-Donnai). Hiring out of uncultivated lands is thus normal in Haut-Donnai, when in Kontum no one could ever lease land not previously worked.

**Article 75**

About the setting of fences, the installation of traps, the sticking of lancets.

**Principle**

I. Occupied or possessed lands can be fenced. The occupier or the proprietor cannot obtain any indemnity for the damage caused in his land by other's cattle, if his barrier does not exist or is inadequate.

II. Owners or occupiers of adjoining lands may fence the lands with a common barrier. Then all are then responsible for the condition of this fence. Whoever wants to elude from this common responsibility can make a private fence.

III. When a field is too close to a village, in a normal roaming zone for cattle, it is forbidden to lay traps and lancets there.

IV. When a fenced field is located far from villages, out of the roaming area, the proprietor or occupier may lay traps and lancets. Inside the fence, the lancets can be stuck everywhere and in all directions.
Outside, the fence may be strung with thorns, but the lancets must be stuck against the fence, pointed towards the inside, intended for the animals coming from the fields.

Traps can only be laid inside of the fence.

Traps and installations of lancets must be marked by visible marks.

When a village changes location and is established close to an existing field, the owner or the occupier of this field may keep his traps and lancets inside of his fence. The fence must be in perfect condition. In other words, if a field is located in a place where its occupier enjoys the rights stated in paragraph IV, the owner has most of his rights retained: if a village come settle down near it.

V.- The owner or occupier of a field is responsible for accidents, damages incurred or suffered by others' cattles, in proportion of what he has observed in preceding prescriptions (article 79).

VI.- The responsibility for precautions to be taken in the application of paragraphs I to IV here--above is incumbent on the lessee or the borrowers of a land which, in case of accident or damage, is involved.

VII.- The gardens in the village must be fenced. People are allowed to lay neither lancets nor traps in them.

VIII.- Hunting traps duly warned cannot be laid but outside the roaming zone for cattles (article 80, paragraph II).

Commentary.

Article 75 rules the touchy relationship between breeders and cultivators, and, under certain reserves, subordinates (like almost everywhere else) the former to the latter who can even defend their fields, in so interesting
a case of moving of the village stated in paragraph IV of the principles here-above.

Cultivators, however, are not omnipotent. During a period of the year (in dry season) when the cattle go roaming in search of a pasture and the lands are fortunately not worked, the cultivators must leave cattle pasture temporarily on fallow fields. It only inconveniences European or Vietnamese concessionaires, as has been discussed about in the commentary of article 72, as one cannot ask to the fence their concessions. As a result, they are exempted from the present article when they ought to observe it more strictly than others, those with their farming under operation at the time when cattle are roaming at will.

Comparisons.

Diverse customs show us in Darlac province, the right and duties of cultivators and breeders.

The custom 216 specifies that "one fences the fields and gardens in order to prevent from outside penetration" and that it is forbidden to permit these fences to deteriorate.

The custom 226, 227 and 228 enumerate the rights of fields owners. They are entitled to reimbursement of damages done in their fields (well fenced, of course) by others' cattle. They are not responsible for the fact that the cattle get wounded or killed on their traps or lancets, but they have no right to kill the cattle that damage their crops.
I have not found other specifications in the Rhadé customary in which many questions (especially that of the changing of location of village, that I discuss in paragraph IV of article 75) are not stated.

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I have no accurate information on what is going on in Haut-Donnai.

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Stieng fields must be fenced if the owner wants to be reimbursed for all damages that the cattle may cause eventually. If there is no barrier, the owner will have only half of the amount of damages done. A sacrifice for reparation, of course, will be made in both cases.

But M. Gerber does not inform us on all the rights and duties of the Stieng farmer. He does not especially point out the custom relating to the roaming zone for cattle, the dressing of lancets in the fields and to the maintenance of rights of the occupant, when a village comes settle down close to his field (article 75, paragraph IV).
Article 76
Water - Alluvion - Erosion.

Principle.

I. Within each "tdring", villages and inhabitants individually or by groups, are entitled to make use of water for irrigation purpose or fishing providing that use will not hamper the traffic and farm work of others.

II. "Tdring" or private owners profit by alluvion deposit damages caused erosion are supported by owners or occupiers without their having rights to indemnity. However they might be compensated by being granted alluvion deposit especially when a river changes its bed.

III. Springs, village fountains, canals, and drains should be kept from pollution.

IV. Should permanent or temporary ponds, take shape in a piece of owned field, they would be the property of the field-owner and its use would result not from application of Paragraph I above but of Article 81, Paragraph V.

Comments.
Problem relating to water involves the following aspects:
1/ Fishing.
2/ Consumption, Bathing; each village has at its disposal one or several springs or a river. Villagers draw water out of them, to take baths or do the laundry.

Permanent pollution of water constitutes one of major instances of filth. This rule has caused conflicts between the Vietnamese and the MoY since to the latter's fountains and springs are somewhat sacred.
3/ Alluvion deposits, change to the river bed: According to article 76 anytime alluvion deposit, erosion or shift to the river bed occur, newly built land shall be partitioned between concerned "takings" after having replaced the land which has been scrapped out. Impaired owners should be served first.

4/ Irrigation, drainage. Nobody has the right to raise objections to the establishing of a canal which will pass on his land. The proprietor or occupier of a land on which a canal passes is empowered to:

a. Make use of the canals in which case he shall participate in sharing the expenses in proportion of the land area, or:

b. Raise the use at the system and thus be entitled to claim a compensation which will be fixed as follows:

- If he merely is an occupier, he might eventually have the right to a compensation equal to the value of the crop which should have been lost due to the canal;

- If he is the proprietor, he shall get the value of the piece of lost land and acquired to the maker of the canal;

- Making and using a canal constitute one of the ways by which a person obtains the property of the irrigated land.

5/ Another feature which could not be omitted: polluting water is regarded as a major violation. "Yang Dak", the water genius plays an important role and every year is celebrated a fountain feast.
People only do not fear actual pollution of water and not ritual pollution. They also realize its poisoning effect. As a matter of fact such a fear has much diminished in time. It still remains that "tomoi" (strangers) are forbidden to approach the fountain, and villagers themselves will bring drinking water to them. During my trip I haven’t seen any village authorizing my men to draw water themselves. On every occasion young natives supplied us in person.

Custom Rhadé 163 shows how terrible still is the inhabitants obsession of polluting water. Repeated discussions between my villagers and Vietnamese settled nearby shows how strong is the Rhadé feeling concerning the pollution of their rivers, even though fear of having them poisoned has disappeared.

Collation of customs.

Customs Rhadé 231 then 235 regulate the land property. In Rhadé land waters are the property of "pôlan". Custom 232 provides that fishing is permitted in rivers but none is recorded with regard to erosion, alluvium, drains despite the fact these subjects are fundamental in Moi land.

Thereupon it might be concluded that whether the rhadé customary we have in hand is far from being complete, or tribo Bahnar has undergone a social evolution which is unknown of Rhadé.